IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.431 OF 1989

Pandharinath Bapu Raut
since deceased through LRs
1(a) Laxmibai Pandarinath
and Others .. Appellants.

Vs.

1.Natraj Madhav Acharya (Expired)
2.Subramanyam Madhav
Acharya and Others .. Respondents.

Mrs.Anita Agarwal for the appellants.

CORAM : D.B.BHOSALE, J.
DATED : 21ST FEBRUARY, 2007

ORAL JUDGMENT:

. This second appeal is directed against the judgment and order dated 17.6.1989 by which the appeal filed by respondent no.1 to 10 - plaintiffs was allowed. The operative part of the order of the appeal court reads thus:

> "The appeal is allowed.
>
> The Judgment and Decree passed by Shri S.G.Bhalchandra, Joint Civil Judge, J.D., Pune on 8.10.1985 in Reg.Civil Suit No.1779/78 is hereby set aside.
>
> It is hereby declared that the plaintiff Nos.1 to 4 have title over Survey No.488 admeasuring 1’8" X 160’ and 33’ X 41’, total area 406 sq. ft. situate on the east of Survey No.499 touching to the eastern boundary of Survey No.499 and the defendants-respondents have to right, title or interest over this land.
>
> The defendants-respondents are hereby restrained permanently from disturbing the possession of the Plaintiff Nos.1 to 4 on the tap pipes and from taking water from their

water connection or the pipe line down in land Survey No.488 by the Plaintiff Nos.1 to 4.

It is hereby declared that the lease-deeds Exhs.173 and 186 ddated 21.1.1957 and 29.1.1973 are not binding on the plaintiffs.

The defendants-respondents are directed to remove their structures from the disputed lands and give vacant possession of the land to the plaintiffs within one month from the date of this order, failing which the plaintiffs can file execution for appointing the Commissioner to remove the structures and to deliver vacant possession of the disputed land Survey No.488 to the plaintiff-appellant Nos.1 to 4.

The defendants no.10 - Pune Municipal Corporation is restrained from giving any permission to the defendants Respondents for creating any permanent structure over the disputed land Survey No.488.

The defendants-respondents shall pay the costs of the appeal to the appellants and bear their own.

Decree be drawn accordingly."

3. Initially, the trial Court had dismissed the suit vide its judgment and order dated 8.10.1985 and the first appeal was allowed in the aforesaid terms. During pendency of this appeal respondent nos.1, 2, 3, 11, 12 and 13 expired and no steps were taken to bring their heirs and legal representatives on record. Insofar as respondent nos.1, 2 and 3 are concerned, they are original plaintiff nos.1 to 3. The abetment of proceedings took place in its own course by passage of time. No specific order for abetment is envisaged under order 22 of the Code of Civil Procedure. It is only for setting aside the abetment that a specific order is necessary under Order 22 Rule 9 of the Code

of Civil Procedure. Thus, the appeal stands abated against all the deceased respondents including respondent nos.1, 2 and 3 - original plaintiffs. Looking to the nature of impugned decree and considering that the heirs of deceased plaintiffs are not brought on record, in my opinion, it would lead to courts passing decree which will be contradictory to the decree which has become final with respect to same subject matter between the appellant and the deceased plaintiffs. In the circumstances the appeal itself deserves to be dismissed as abated. Order accordingly.

(D.B.Bhosale, J.)